

Tax Type: PROPERTY TAX  
Issue: Educational Ownership/Use

LOMBARD ELEMENTARY SCHOOL )  
DISTRICT 44 ) Docket #s 93-22-199  
Applicant ) 92-22-200 and  
 ) 93-22-309  
 ) Parcel Index #s 06-20-201-005,  
 ) 06-18-200-011 and  
v. ) 06-18-200-012  
 )  
THE DEPARTMENT OF REVENUE ) George H. Nafziger  
OF THE STATE OF ILLINOIS ) Administrative Law Judge

APPEARANCES: Attorney Alison Link Dawley appeared on behalf of Lombard Elementary School District 44 (hereinafter referred to as the "applicant"). Mr. Robert G. Rybica, assistant states attorney of DuPage County, appeared on behalf of the DuPage County Board of Review.

Mrs. Pam Schau, business manager of the applicant, Mr. William Roberts, vice-president of support services for National-Louis University, and Mr. Mohammed Haque, chairperson of the education committee of Community Education in Excellence, were present, and testified on behalf of the applicant in this matter.

The applicant is a public elementary school district serving the public school population from grades K through 8 within its district. The applicant owned the three parcels here in issue during the entire 1993

assessment year. DuPage County parcel No. 06-20-201-005, during 1993, was improved with a newer style, one-story open concept, air-conditioned school building, known as the Highland Hills School. DuPage County parcels numbered 06-18-200-011 and 06-18-200-012 during 1993, were improved with a two-level older style school building, known as the Green Valley School.

The issues in this matter include first, whether DuPage County parcel No. 06-20-201-005 and the Highland Hills School building located thereon, were used in furtherance of the applicant's school purposes during 1993. The second issue is whether National-Louis University (hereinafter referred to as the "University"), qualified as a school during the 1993 assessment year. The third issue is whether the University used DuPage County parcel No. 06-20-201-005 for school purposes during 1993. The fourth issue is whether ESC4 and AVID used DuPage County parcel No. 06-20-201-005 for school purposes during 1993. The fifth issue is whether DuPage County parcel No. 06-20-201-005 and the Highland Hills School were leased for profit by the applicant during the 1993 assessment year. The sixth issue is whether DuPage County parcels numbered 06-18-200-011 and -012 and the Green Valley School located thereon, were used in furtherance of the applicant's school purposes during the 1993 assessment year. The seventh issue is whether the College Preparatory School of Illinois (hereinafter referred to as "College Prep"), qualified as a school during 1993. The eighth issue is whether College Prep used DuPage County parcels numbered 06-18-200-011 and -012 for school purposes during 1993. The ninth issue is whether DuPage County parcels numbered 06-18-200-011 and -012 and the Green Valley School were leased for profit by the applicant during the 1993 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that DuPage County parcel No. 06-20-201-005 and the Highland Hills School building were used in furtherance of the

applicant's school purposes during 1993. It is also determined that the University qualified as a school during 1993. It is further determined that the University used DuPage County parcel No. 06-20-201-005 for school purposes during 1993. In addition, it is determined that ESC4 and AVID used DuPage County parcel No. 06-20-201-005 for school purposes during 1993. It is determined that DuPage County parcel No. 06-20-201-005 was not leased for profit during 1993. DuPage County parcels 06-18-200-011 and -012 and the Green Valley School located thereon, it is determined, were used in furtherance of the school purposes of the applicant during the 1993 assessment year. It is also determined that College Prep qualified as a school during 1993, and used DuPage County parcels numbered 06-18-200-011 and -012 for school purposes during that year. Finally, it is determined that DuPage County parcels numbered 06-18-200-011 and -012 and the Green Valley School were not leased for profit by the applicant during the 1993 assessment year.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department" in this matter, namely that DuPage County parcel No. 06-20-20-005 and the Highland Hills School located thereon, qualified for exemption for 50% of the 1993 assessment year, and that DuPage County parcels numbered 06-18-200-011 and -012 and the Green Valley School did not qualify for exemption for the 1993 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 6C.

2. On September 30, 1993, the DuPage County Board of Review transmitted Applications for Property Tax Exemption concerning the parcels here in issue and the buildings thereon, to the Department (Dept. Ex. Nos. 2, 2I, and 2M).

3. On July 28, 1994, the Department approved the exemption of DuPage

County parcel No. 06-20-201-005 and the Highland Hills School located thereon, for 50% of the 1993 assessment year (Dept. Ex. No. 3).

4. On July 28, 1994, the Department denied the exemption of DuPage County parcels numbered 06-18-200-011 and -012 and the Green Valley School located thereon (Dept. Ex. Nos. 3A and 3B).

5. On August 12, 1994, the business manager of the applicant requested a formal hearing in these matters (Dept. Ex. Nos. 4, 4A, & 4B).

6. The hearing in these matters was held on March 13, 1995, pursuant to those requests.

7. The applicant is a public elementary school district serving the public school population of its district from grades K through 8.

8. DuPage County parcel No. 06-20-20-005 and the entire Highland Hills School building located thereon, were leased to the University for the period January 1, 1993, through June 30, 1993.

9. During the period July 1, 1993, through August 15, 1993, the Highland Hills School was leased 83% to the University, and 17% to ESC4.

10. During the period August 16, 1993, through December 31, 1993, the Highland Hills School was leased 17% to ESC4, 17% to AVID, and 66% was not used.

11. The University is a private university accredited by the North Central Association of Colleges and Schools. During 1993, the University operated a college of education, a college of arts and sciences, and a college of management and business.

12. During 1993, the University had approximately 8,000 full-time equivalent students, of which about 1,200 attended the classes offered at the Highland Hills School during the time the University was leasing all, or part of, that facility.

13. The University, during 1993, offered degrees ranging from baccalaureate through the doctor of philosophy.

14. During 1993, the University's principal campus was located in Evanston.

15. In 1993, the University also operated campuses in Chicago, Elgin, and Lombard. Part of the Lombard campus was located at the Highland Hills School.

16. ESC4 was created pursuant to the Illinois School Code, and is administered by Berardo DeSimone, the DuPage County Regional Superintendent of Schools. ESC4's primary purpose is to provide professional development activities for educators, teachers, and administrators working for the schools in DuPage County.

17. ESC4's services included coordination of certain programs and activities, such as district staff development and administrators' academies.

18. AVID is in effect a county-wide audiovisual lending library for school districts, authorized by the Illinois School Code and administered by Berardo DeSimone, the DuPage County Regional Superintendent of Schools.

19. DuPage County parcels 06-10-200-011 and -012 and the Green Valley School located thereon, were entirely leased to Scholastic Prep throughout the 1993 assessment year.

20. During 1993, Scholastic Prep was a Muslim parochial school enrolling students aged 6 through 18. Its curriculum included classes in English, math, physics, chemistry, biology, art, physical education, geography, history, and Arabic.

21. Classes were conducted five days per week from 8:00 A.M. to approximately 3:30 P.M.

22. Although not required, one-half the teachers were certified by the Illinois State Board of Education.

23. Scholastic Prep did offer scholarships to students based on financial need.

24. The students of Scholastic Prep were minors between the ages of six and 18 that would otherwise attend the public school system in their respective residential areas.

25. The program at Scholastic Prep substantially lessened the tax burden of the public by providing education training that would have otherwise had to have been furnished by the government.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 8 exempts certain property from taxation in part as follows:

"...all property of public school districts...not leased by such school...districts or otherwise used with a view to profit."

35 ILCS 205/19.1 exempts certain property from taxation in part as follows:

"...and any other real property used by such schools exclusively for school purposes, not leased by such schools or otherwise used with a view to profit,...and all lands heretofore or hereafter...used for public school, college, theological seminary, university or other educational purposes...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

The applicant, I conclude, is a school district which qualifies for exemption, pursuant to 35 ILCS 205/19.18 aforesaid.

The Supreme Court, in applying the language of Article IX, Section 6, of the Illinois Constitution concerning schools, to the provisions of Section 19.1 of the Revenue Act of 1939, (35 ILCS 205/19.1), has over the years developed a two-part test.

In *Coyne Electrical School v. Paschen*, 12 Ill.2d 387 (1957), the Court set forth this two-part test as follows:

"On the basis of the foregoing decisions it is manifest that two things are necessary to qualify a private institution for tax exemption as a school; first, a course of study which fits into the general scheme of education founded by the State and supported by public taxation; second, a course of study which substantially lessens what would otherwise be a governmental function and obligation."

Based on the foregoing, I conclude that both University and College Prep met both tests set forth by the Supreme Court in the *Coyne* case and consequently, qualify as schools within the purview of 35 ILCS 205/19.1.

In the case of *Association of American Medical Colleges v. Lorenz*, 17 Ill.2d 125 (1959), the Supreme Court held that property which is a necessary adjunct to the educational process may qualify for exemption even though classes are not conducted on the property. Both ESC4 and AVID were created pursuant to the Illinois School Code, and were administered by the office of the DuPage County Regional Superintendent of Schools for the benefit of the school districts located in DuPage County.

In her brief, the attorney for the applicant cites the case of *Childrens Development Center, Inc. v. Olson*, 52 Ill.2d 332 (1972). In that case, the School Sisters of St. Francis, a religious organization, leased a portion of a former convent to Childrens Development Center, Inc., an organization determined to be charitable by the Court. In that case, the Court held that the leasing of property by an exempt organization to an exempt organization which used the property for an exempt purpose, was not

a lease for profit.

The Court stated this position at pages 334, 335 and 336 of the opinion.

First, at pages 334 and 335, the Court said:

"It is not questioned that the activities conducted by Center are charitable and that if the property were owned by Center and these activities conducted thereon it would be tax exempt. Also, if Sisters were to conduct a similar operation on the property instead of Center, it appears that the property would be tax exempt."

Then, at page 336, the Court said:

"Following the leasing the primary use to which the property was devoted was serving the tax-exempt charitable purpose of Center. This did not destroy the tax-exempt status of the leased property although the letting produced a return to Sisters."

Pursuant to the foregoing cases, I conclude that the University, College Prep, ESC4, and AVID all would qualify for exemption, if they owned the parcels here in issue pursuant to 35 ILCS 205/19.1. I have previously concluded that the applicant which does own these parcels, qualifies for exemption pursuant to 35 ILCS 205/19.18.

I therefore conclude that the leases by the applicant to the University, College Prep, ESC4, and AVID, were all leases that served the tax-exempt school purposes of the applicant.

I finally conclude that the 66% of the Highland Hills School, which was not in use during the period August 15, 1993, through December 31, 1993, was clearly exempt pursuant to 35 ILCS 205/19.18, as it was owned by the applicant, and not leased.

I therefore recommend that DuPage County parcel numbered 06-20-201-005 and the Highland Hills School located thereon, and also DuPage County parcels numbered 06-10-200-011 and 06-18-200-012 and the Green Valley School located thereon, be exempt from real estate tax for all of the 1993 assessment year.

Respectfully Submitted,



George H. Nafziger  
Administrative Law Judge

August , 1995